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ORIGINAL

TOWN OF YARMOUTH RECEIVED

BOARD OF
SELECTMEN

1146 ROUTE 28 SOUTH YARMOUTH MASSACHUSETTS 02664-4492

Telephone (508) 398-2231, Ext. 271, 270 — Fax (508) 398-2265

TOWN
ADMINISTRATOR

Robert C. Lawton, Jr.

OFFICE OF THE CHAIRMAN

RECEIVED

SEP 09 1999

August 12, 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Chairman William Kennard
Federal Communications Commission
145 12th Street SW
Washington, DC 20554

Ex Parte Filing in cases WT 99-217;CC96-98

Dear Chairman Kennard:

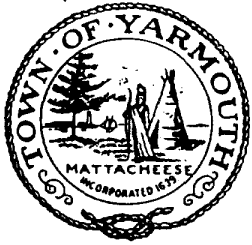
The Town of Yarmouth respectfully requests that the FCC does not adopt the rule proposed in the cases cited above allowing any phone company to serve any, tenant of a building and to place their antenna on the building roof.

In many states, approximately 70 new phone companies have been certificated to provide service. Add in the wireless phone companies and under your rule, we may have 100 companies allowed to place their wires in a building, and their antennas on the roof-all without the landlord's permission.

In our opinion, the FCC lacks the authority to make such rules. It would violate basic property rights-a landlord, city or condominium has the right to control who comes on their property. Congress did not give the FCC the authority to condemn space for 100 phone companies in every building in the country.

The FCC cannot preempt state and local building codes, zoning ordinances, environmental legislation and other laws affecting antennas on roofs. Zoning and building codes are purely matters of state and local jurisdiction which under Federalism and the Tenth Amendment you may not preempt.





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For example, building codes are imposed in part for engineering related safety reasons. These vary by region, weather patterns and building type - such as the likelihood of earthquakes, hurricanes and maximum amount of snow and ice. If antennas are too heavy or too high, roofs collapse. If they are not properly secured, they will blow over and damage the building, its inhabitants or passers-by.

Similarly, zoning laws are matters of local concern which protect and promote the public health, safety and welfare, ensure compatibility of uses, preserve property values and the character of our communities. We may restrict the numbers, types, locations, size and aesthetics of antennas on building (such as requiring them to be properly screened) to achieve these legitimate goals, yet see that needed services are provided. This requires us to balance competing concerns which we do every day, with success. Everyone wants garbage picked up, no one wants a transfer station. Everyone wants electricity, no one wants a substation near their home.

The application of zoning is highly dependent on local conditions. These vary greatly state by state, from municipality to municipality and within municipalities. We have successfully applied these principles and balanced competing concerns for eighty years. Zoning has not unnecessarily impeded technology or the development of our economy, nor will it here. There is simply no basis to conclude that for a brand-new technology (wireless fixed telephones) with a minuscule track record that there are problems on such a massive scale with the 38,000 units of local government in the U.S. as to warrant Federal action.

On rights of way, local management of them is essential to protect the public health, safety, and welfare. Congress has specifically prohibited you from acting in this area.

We believe the telephone providers' complaints about rights-of-way management and fees are overblow, as shown by the small number of court cases on this-only about a dozen nationwide in the three years since the 1996 Act. With 38,000 municipalities nationwide and thousands of phone companies, this number of cases shows that the system is working, not that it is broken.





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Finally, we are surprised that you suggest that the combined Federal, state and local tax burden on new phone companies is too high. The FCC has no authority to affect state or local taxes any more than it can affect Federal taxes.

For these reasons, please reject the proposed rule and take no action on rights of way and taxes.

Respectfully,

Robert C. Lawton, Jr.
Town Administrator

cc: Board of Selectmen

Commissioner Harold Furchtgott-Roth
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Ms. Magalie Roman Salas), Secretary (2)
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Mr. Jeffrey Steinberg
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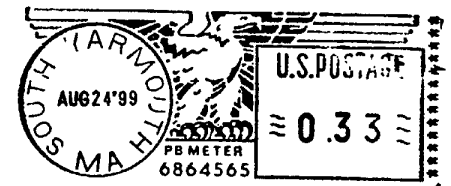
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